Abd Ghani Golamdin v Universiti Utara Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-18–07 OF 2020(K)
TENGKU MAIMUN CHIEF JUSTICE, ZABARIAH YUSOF AND HASNAH HASHIM FCJJ
4 SEPTEMBER 2023

Contract — Formation — Whether existence of contract was not proven — Appellant sued respondents for breach of contract of alleged promise to pay him additional remuneration — Appellant relied on document containing alleged promise signed between him and third party — Respondents claimed no knowledge of alleged promise and denied contents of document — Whether respondents were not bound by document as they were strangers to it — Whether even though trial court admitted document into evidence and marked same as exhibit it was entitled to eventually hold that the same was an afterthought — Whether appellant could not rely upon s 92 of Evidence Act 1950 as respondents were not trying to contradict the terms of the document but to say that it did not exist

During the appellant's employment with the first respondent ('R1'), he was seconded to work for various periods with the second and third respondents which were owned by R1. After his secondment stints concluded and he returned to work in R1, the appellant sued the respondents for, inter alia, arrears of salary, commissions, compensation and bonus amounting to a total sum of RM15,619,916 on the ground that they had breached a purported oral agreement made in 2002 and a purported written agreement dated 1 July 2004 to allegedly pay him additional remuneration. The appellant claimed the said oral agreement was made between him and the then Vice-Chancellor of R1 which was witnessed by the then Chief Executive Officer ('PW4') of the second respondent. The appellant contended that under the oral agreement, he was promised various remuneration payments in addition to his salary during the terms of his secondment and that upon the Vice-Chancellor's instructions, the said agreement was reduced into writing on 1 July 2004 ('exh P22'). The respondents denied the existence of both the oral and written agreements and said they had never promised to pay the appellant the additional remuneration that he claimed in the action. Following a trial, the High Court dismissed the appellant's claim on finding that there was no evidence to prove the existence of the alleged oral or written agreements. Although P22, which was produced by the appellant to show a purported agreement between him and PW4 was admitted by the trial judge and marked as an exhibit, the judge eventually found that it was not authentic and was an afterthought. The respondents were also not parties to the document and were therefore not bound by it. The Court

of Appeal ('COA') upheld the trial court's verdict. The instant appeal was against the COA's decision. A

Held, unanimously dismissing the appeal:

(1) The trial court's decision to dismiss the appellant's claim — which decision was affirmed by the Court of Appeal — was not plainly wrong and there was no reason for this court to interfere with the decision (see para 32). B

(2) On the facts in the present appeal, the courts below were right in holding that the appellant had failed to prove his claim. He failed to prove that the terms of the alleged remuneration were in fact offered to him and/or that the second and third respondents had authorised or approved the execution of P22. The findings of the High Court were not perverse given the testimonies of the respondents' witnesses who were former directors of the second and third respondents that they never approved and had no knowledge of P22. Their testimonies were supported by the fact that there was absent any contemporaneous document in the form of any board of directors' resolution or approval to pay the amount claimed by the appellant. The appellant and his witnesses, PW4 and PW2, claimed that the third respondent's board of directors had approved the terms contained in P22 and had purportedly authorised PW4 to execute P22. However, the minutes of the meetings of the board did not contain any discussion or approval of the terms of P22 or any authorisation to PW4 to execute P22. In other words, the appellant had failed to prove the contents of P22 (see paras 23 & 25). C D E F

(3) The appellant's attempt to overcome the respondents' case by invoking the *Turquand* rule was misplaced as the facts clearly showed that the appellant was not an outsider but an insider to the third respondent, being its managing director from 2003 until 2011 (see paras 24 & 26). G

(4) Even though the trial judge decided to admit into evidence and mark as an exhibit the document that was produced as an original copy of P22, the authenticity, existence and contents of P22 was disputed from the outset by the respondents who denied its existence. Despite the admission of P22, the trial judge allowed respondents' counsel to cross-examine the appellant on the existence and validity of P22. Ultimately, the trial judge found P22 to be an afterthought. The trial judge's finding was not wrong or against the weight of the evidence, for quite apart from the fact of its admission, P22 was rightly found to have no probative value. The appellant could not invoke s 92 of the Evidence Act 1950 to say that the respondents could not use oral evidence to contradict the written terms of P22 because the respondents were not contradicting the contents of the document but were denying its very H I

existence. Section 92 was not attracted when the very existence and validity of the subject document was in question (see paras 28–30).

(5) The issue of concealment raised by the appellant was never pleaded and no evidence was led to show that the second and third respondents — which were owned by the first respondent — were set up solely as a façade to conceal or to deprive the appellant of his claim for the purported additional remuneration (see para 31).

[Bahasa Malaysia summary

Semasa perayu bekerja dengan responden pertama ('R1'), beliau telah dipinjamkan untuk bekerja dalam pelbagai tempoh dengan responden kedua dan ketiga yang dimiliki oleh R1. Selepas tempoh peminjamannya tamat dan beliau kembali bekerja di R1, perayu menyaman responden untuk, antara lain, tunggakan gaji, komisen, pampasan dan bonus berjumlah RM15,619,916 atas alasan mereka telah melanggar perjanjian lisan yang dikatakan dibuat pada tahun 2002 dan perjanjian bertulis yang dikatakan bertarikh 1 Julai 2004 yang didakwa untuk membayar imbuhan tambahan kepadanya. Perayu mendakwa perjanjian lisan tersebut dibuat antara beliau dan Naib Canselor R1 ketika itu yang disaksikan oleh ketua pegawai eksekutif ('PW4') responden kedua ketika itu. Perayu berpendapat bahawa di bawah perjanjian lisan itu, beliau telah dijanjikan pelbagai bayaran imbuhan sebagai tambahan kepada gajinya sepanjang tempoh peminjamannya dan bahawa atas arahan Naib Canselor, perjanjian tersebut telah dijadikan bertulis pada 1 Julai 2004 ('eksh P22'). Responden menafikan kewujudan kedua-dua perjanjian lisan dan bertulis dan berkata mereka tidak pernah berjanji untuk membayar perayu imbuhan tambahan yang dituntutnya dalam tindakan tersebut. Selepas perbicaraan, Mahkamah Tinggi menolak tuntutan perayu apabila mendapati tiada keterangan untuk membuktikan kewujudan perjanjian lisan atau bertulis yang didakwa. Walaupun P22, yang mana dikemukakan oleh perayu untuk menunjukkan perjanjian yang dikatakan antara beliau dan PW4 telah diterima oleh hakim bicara dan ditanda sebagai ekshibit, hakim akhirnya mendapati ia tidak sahih dan merupakan satu pemikiran semula. Responden juga bukan pihak dalam dokumen tersebut dan oleh itu tidak terikat dengannya. Mahkamah Rayuan ('MR') mengekalkan keputusan mahkamah perbicaraan. Rayuan semasa adalah terhadap keputusan MR.

Diputuskan, menolak rayuan:

(1) Keputusan mahkamah perbicaraan untuk menolak tuntutan perayu — yang mana keputusan tersebut telah disahkan oleh Mahkamah Rayuan — tidak jelas salah dan tidak ada sebab untuk mahkamah ini mengganggu keputusan tersebut (lihat perenggan 32).

(2) Mengenai fakta dalam rayuan semasa, mahkamah di bawah adalah betul dalam memutuskan bahawa perayu telah gagal membuktikan

tuntutannya. Beliau gagal membuktikan bahawa syarat imbuhan yang didakwa sebenarnya ditawarkan kepadanya dan/atau responden kedua dan ketiga telah membenarkan atau meluluskan pelaksanaan P22. Dapatan Mahkamah Tinggi tidak bertentangan dengan keterangan saksi responden yang merupakan bekas pengarah responden kedua dan ketiga bahawa mereka tidak pernah meluluskan dan tidak mengetahui P22. Keterangan mereka disokong oleh fakta bahawa tiada sebarang dokumen kontemporari dalam bentuk ketetapan atau kelulusan lembaga pengarah untuk membayar jumlah yang dituntut oleh perayu. Perayu dan saksinya, PW4 dan PW2, mendakwa lembaga pengarah responden ketiga telah meluluskan terma yang terkandung dalam P22 dan kononnya memberi kuasa kepada PW4 untuk melaksanakan P22. Walau bagaimanapun, minit mesyuarat lembaga pengarah tidak mengandungi sebarang perbincangan atau kelulusan terma P22 atau sebarang kebenaran kepada PW4 untuk melaksanakan P22. Dalam erti kata lain, perayu telah gagal membuktikan kandungan P22 (lihat perenggan 23 & 25).

(3) Percubaan perayu untuk mengatasi kes responden dengan menggunapakai *Turquand rule* adalah tersalah arah kerana fakta jelas menunjukkan bahawa perayu bukanlah orang luar tetapi orang dalam kepada responden ketiga, sebagai pengarah urusannya dari 2003 hingga 2011 (lihat perenggan 24 & 26).

(4) Walaupun hakim bicara memutuskan untuk menerima menjadi keterangan dan menandakan sebagai ekshibit dokumen yang telah dikemukakan sebagai salinan asal P22, kesahihan, kewujudan dan kandungan P22 telah dipertikaikan sejak awal lagi oleh responden yang menafikan kewujudannya. Walaupun menerima P22, hakim bicara membenarkan peguam responden untuk menyoal balas perayu mengenai kewujudan dan kesahihan P22. Pada akhirnya, hakim perbicaraan mendapati P22 sebagai suatu yang difikirkan semula. Dapatan hakim bicara tersebut tidak salah atau bertentangan dengan berat keterangan, kerana selain daripada fakta penerimaannya, P22 sememangnya didapati tidak mempunyai nilai probatif. Perayu tidak boleh menggunakan s 92 Akta Keterangan 1950 untuk mengatakan bahawa responden tidak boleh menggunakan keterangan lisan untuk bercanggah dengan terma bertulis P22 kerana responden tidak bercanggah dengan kandungan dokumen tersebut tetapi menafikan kewujudannya. Seksyen 92 tidak tertarik apabila kewujudan dan kesahihan dokumen subjek dipersoalkan (lihat perenggan 28–30).

(5) Isu penyembunyian yang dibangkitkan oleh perayu tidak pernah diplidkan dan tiada keterangan diketengahkan untuk menunjukkan bahawa responden kedua dan ketiga — yang dimiliki oleh responden pertama — ditubuhkan semata-mata sebagai fasad untuk

menyembunyikan atau menghalang perayu terhadap tuntutannya untuk imbuhan tambahan yang dikatakan (lihat perenggan 31).]

Cases referred to

Global Globe Property (Melawati) Sdn Bhd v Jangka Prestasi Sdn Bhd [2020] 6 MLJ 333; [2020] 6 CLJ 1, CA (refd)
John Lo Thau Fah v FACB Resorts Berhad [2007] 4 MLJ 685; [2007] 8 CLJ 484, HC (refd)
KL Engineering Sdn Bhd & Anor v Arab Malaysian Finance Bhd [1994] 2 MLJ 201; [1994] 2 CLJ 480, SC (refd)
Kang Hai Holdings Sdn Bhd & Anor v Lee Lai Ban (trading as the sole proprietor under the name and style of 'Sang Excavating Services') [2018] 2 MLJ 574; [2018] 2 CLJ 550, FC (refd)
Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697; [2017] 5 CLJ 418, FC (refd)
Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465; [1998] 1 CLJ 793, FC (refd)
Prest v Prest and others [2013] 4 All ER 673, SC (distd)
Royal British Bank v Turquand [1843–60] All ER Rep 435 (distd)
Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v Arab-Malaysian Prima Realty Sdn Bhd & Ors [2001] 1 MLJ 324; [2001] 1 CLJ 779, CA (refd)

Legislation referred to

Contracts Act 1950 s 2(e)
Evidence Act 1950 ss 91, 92

Appeal from: Civil Appeal No K-01(NCVC)(W)-205–03 of 2018 (Court of Appeal, Putrajaya)

Harjinder Kaur (with Mohd Farhan Abdul Ghani) (Shahrizat Rashid & Lee) for the appellant.
Kanesh Sundrum (with Nurul Jannah Zakariah) (Kanesh Sundrum & Co) for the respondent.

Tengku Maimun Chief Justice (delivering judgment of the court):

INTRODUCTION

[1] This appeal arose out of the dismissal of the appellant's claim against the respondents for, inter alia, arrears of salary, commissions, compensation and bonus pursuant to a purported oral agreement made in 2002 and a purported written agreement dated 1 July 2004.

[2] The appellant was a full-time employee of the Universiti Utara Malaysia ('the first respondent'), a higher educational institution. Uniutama Management Holdings Sdn Bhd ('the second respondent') is a company wholly owned by the first respondent while Uniutama Solution Sdn Bhd ('the third respondent') is a company wholly owned by the second respondent.

BACKGROUND FACTS

[3] To develop its Information and Technology ('ICT') system, the first respondent employed the appellant in 1989 as its Senior System Analyst. In 1992, the appellant was elevated as the Chief System Analyst and in 1999, was appointed as the 'Pengarah Pusat Komputer' in the first respondent.

[4] During the appellant's tenure as the Pengarah Pusat Komputer, the appellant played a major role in developing the ICT within the first respondent which led to the creation of a computer known as 'SerindIT'. And this made the first respondent the first local university to create its own computer. In view of this development, the first respondent structured a plan to commercialise the 'SerindIT' computer.

[5] On 16 February 2002, the appellant was seconded to the second respondent. As per the letter dated 28 January 2002, the first respondent will continue to pay the appellant's salary and allowances and the second respondent will pay a special allowance to the appellant as its seconded staff. On 2 April 2002, the Board of Directors of the second respondent approved payment of a special allowance of RM650 per month for all staff of the second respondent including the appellant. The appellant received a total sum of RM6,764.20 comprising the following:

Basic salary paid by the first respondent	RM4,864.20
Usual allowance paid by the first respondent	RM1,250
Special allowance paid by the second respondent	RM650
Total	RM6,764.20

[6] After the third respondent was incorporated on 17 October 2002 the appellant's secondment at the second respondent ended and the appellant was seconded to the third respondent as its Managing Director. The secondment of the appellant at the third respondent was extended several times until 31 December 2011.

[7] Apart from receiving the remuneration referred to in para [5] above, during the whole period of secondment at the third respondent from 2002 to 2011, the appellant twice received a 'one off' allowance of RM100,368 and RM19,237.14 respectively, as part of an incentive payment scheme that was

given to all staff of the first respondent seconded to the third respondent. The appellant also had his special allowance increased and he also received bonus.

[8] After his secondment with the third respondent ended in December 2011, the appellant returned to serve the first respondent. For the whole duration of the secondment at the second and the third respondents, the appellant remained an employee of the first respondent.

PROCEEDINGS IN THE HIGH COURT

[9] In December 2014, the appellant filed an action against the respondents, claiming for a sum of RM15,619,916.09. The appellant contended that the respondents breached the oral agreement in 2002 entered into between him and the late Dato' Dr Ahmad Fawzi bin Mohd Basri ('Dato' Fawzi'), the then Vice-Chancellor of the first respondent, which was witnessed by Syed Soffian bin Syed Ismail ('PW4'), the Chief Executive Officer of the second respondent. The appellant contended that vide the oral agreement, he was promised additional remuneration during the term of his secondment. The appellant further contended that upon oral instructions of Dato Fawzi, the oral agreement was reduced into a written agreement dated 1 July 2004 ('exh P22').

[10] According to the appellant, in return for his service, the oral agreement provided that the appellant's starting salary is in the range of RM15,000 with a yearly increment and allowances as well as other incentives. On top of that, the appellant is also entitled to be paid the sales commission of at least 10% to 15% for projects secured through the first respondent's companies, bonus and other incentives depending on the company's profits, insurances, and gratuity and compensation if the appellant is terminated for service.

[11] The respondents denied entering into such oral agreement and denied authorising the execution of P22. It was further the case of the respondents that exh P22 was unknown to them. The respondents explained that the appellant was not paid the alleged additional remuneration for the simple reason that the terms were never offered to the appellant.

[12] The primary issue for determination by the learned trial judge was whether the additional remuneration terms were indeed offered to the appellant. Since the appellant claimed that the purported oral agreement had been reduced to a written form vide exh P22, the learned judge proceeded to consider the validity of exh P22. In this regard, Her Ladyship directed her mind to the following issues, namely whether or not the appellant has shown that the agreement dated 1 July 2004 is authentic and if the answer is in the affirmative, whether the respondents are bound by the said agreement.

[13] Having considered exh P22, the documentary evidence, the oral evidence of the witnesses and the parties' rivalling contentions, Her Ladyship dismissed the appellant's claim. The findings of the learned trial judge may be summarised thus:

(a) the appellant and PW4 were unable to prove that there was in fact an offer made to the appellant on the alleged remuneration and there was also no evidence to prove the purported authorisation by Dr Fawzi for PW 4 to execute the agreement;

(b) the appellant has conscientiously and persistently pursued his claim. He had written numerous letters, prepared working papers and attended meetings in the hope of securing the alleged remuneration. However, nowhere in his correspondence did the appellant mention the agreement dated 1 July 2004. The working paper also did not refer to exh P22;

(c) there was a special Board of Directors meeting held on 11 March 2007 and one of the issues was to find a solution to the appellant's remuneration claim. The minutes of the meeting shows that PW4 was present. PW4 could but made no mention of the agreement dated 1 July 2004 let alone produced it;

(d) exh P22 shows that both the appellant and PW4 were the signatories to the agreement and exh P22 does not bear any witness. As such it was safe to assume that only the appellant and PW4 were privy to the agreement and it was manifestly clear that the agreement was crucial to the appellant's claim. Yet both the appellant and PW4 did not see it fit to mention the agreement. If the agreement did exist, the reasonable thing for the appellant and PW4 to do was to inform the paymaster(s) to pay up as the remuneration terms were encased in the agreement; and

(e) in light of PW4's doubtful authorisation and the appellant's and PW4's conduct, exh P22 was an afterthought and that the appellant has failed to show that the agreement dated 1 July 2004 is authentic.

[14] The learned trial judge had also observed that the appellant was unable to enforce the agreement exh P22 against the respondents due to the doctrine of privity of contract. Her Ladyship stated that the agreement dated 1 July 2004 appeared to be entered into between the appellant and Sykt UUM, not between the appellant and any of the respondents herein. If indeed the agreement is enforceable, it can only be enforced against Sykt UUM.

[15] Aggrieved by the decision of the High Court, the appellant appealed to the Court of Appeal. The appeal was unanimously dismissed.

PROCEEDINGS IN THE FEDERAL COURT

[16] The appellant obtained leave to appeal to this court on the following questions of law:

(a) whether the authenticity and validity of an agreement can be challenged and/or disputed in the absence of any vitiating factor(s) such as fraud, forgery, misrepresentation or conspiracy to defraud?

(b) whether an agreement which had been properly adduced and admitted as evidence pursuant to ss 91 and 92 of the Evidence Act 1950 can be regarded as the best evidence in proving one's claim against another?

(c) if the answer to the second question is in the affirmative, whether the agreement is still open to being challenged on the basis that the agreement does not exist and accordingly unenforceable?

(d) whether it is a pre-requisite for a claimant to prove (in writing or otherwise) that the person who executed an agreement on behalf of a company has the requisite authority to do so before the claimant can be entitled to rely on the indoor management rule as propounded in *Royal British Bank v Turquand* [1843–60] All ER Rep 435? and

(e) whether the concealment principle as established by the Supreme Court of the United Kingdom in *Prest v Prest and others* [2013] 4 All ER 673 in making a third party liable and accountable under an agreement without having to pierce the veil of incorporation is applicable in Malaysia and if so under what circumstances?

OUR ANALYSIS/DECISION

[17] For the reasons that follow, we had unanimously dismissed the appeal without answering the leave questions.

[18] Learned counsel for the appellant argued that exh P22 is deemed to be an authentic and a valid agreement in the absence of any vitiating factors such as fraud, forgery, and conspiracy to defraud. Put differently, the appellant took the view that all written documents purporting to be agreements are automatically deemed to be valid and enforceable unless the vitiating factors aforementioned are proven.

[19] With respect, the validity and enforceability of an agreement or a contract are two different and separate issues which are to be dealt with separately. The validity of a contract is governed by s 2(e) of the Contracts Act 1950 which provides that every promise and every set of promises, forming the consideration for each other, is an agreement.

[20] For there to be a valid agreement, basically there must be an offer, acceptance, consideration and an intention to create legal relations. In relation to agreements made on behalf of corporations, there is the issue of whether the parties have due authority to enter into the agreement and whether internal procedures, for example Board approvals or resolutions have been obtained; and if internal procedures were not adhered to, whether the *Turquand* rule would apply to save the agreement.

[21] Only where there is a valid agreement in existence, does the enforceability of the agreement comes into play. And it is at this stage that the vitiating factors alluded to by learned counsel for the appellant, if at all, would be considered by the court.

[22] In the instant appeal, the agreement dated 1 July 2004 although was admitted as an exhibit by the High Court, was found to be not an authentic agreement. This finding of fact was made upon consideration of the factual circumstances, particularly due to the absence of authority and non-compliance with internal procedures of the respective respondent companies, and not due to the presence of any vitiating factors (see GH Trietel on *The Law of Contract*; *John Lo Thau Fah v FACB Resorts Berhad* [2007] 4 MLJ 685; [2007] 8 CLJ 484; *KL Engineering Sdn Bhd & Anor v Arab Malaysian Finance Bhd* [1994] 2 MLJ 201; [1994] 2 CLJ 480; *Kang Hai Holdings Sdn Bhd & Anor v Lee Lai Ban (trading as the sole proprietor under the name and style of 'Sang Excavating Services')* [2018] 2 MLJ 574; [2018] 2 CLJ 550; and *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* [2017] 4 MLJ 697; [2017] 5 CLJ 418).

[23] On the facts of the present appeal, we agreed with the courts below that the appellant failed to prove his claim. He failed to prove that the terms of the alleged remuneration were in fact offered to him and/or that the second and the third respondents had authorised or approved the execution of exh P22. The findings of the High Court were not perverse given the testimony of the respondents' witnesses who were former directors of the second and the third respondents that they never approved and had no knowledge of document exh P22. Their testimonies were supported by the fact that there was absent of any contemporaneous document in the form of the Board of Director's resolution or approval to pay the amount claimed by the appellant. In other words, the appellant failed to prove the contents of exh P22.

[24] The appellant attempted to overcome the respondents' case by invoking the *Turquand* rule, where by this rule, an outsider contracting with a company in good faith is entitled to assume that the internal requirements and procedures of the company have been complied with. In this regard, we noted

A that the appellant initially had pleaded that exh P22 was a contract between the appellant and the third respondent. The appellant then amended his statement of claim to plead that exh P22 was a contract between him and the second respondent.

B **[25]** However, in their testimonies, the appellant and his witnesses, PW4 and PW2 stated that it was at the third respondent's Board of Director's meetings held on 19 June 2003 and on 29 June 2004 that the terms contained in P22 were approved by the third respondent's Board. It was also the evidence of PW4 that he was authorised to execute exh P22 by the third respondent's C Board of Directors. At the risk of repetition, those minutes however do not contain any such discussion or approval of the terms of exh P22 and neither do they contain any authorisation of PW4 to execute exh P22.

D **[26]** In light of the above, we find that the appellant's reliance on the *Turquand* rule is misplaced as the facts clearly show that the appellant is not an outsider but an insider to the third respondent, being its Managing Director from 2003 to 2011 (see *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465; [1998] 1 CLJ 793).

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[27] It was also contended by learned counsel for the appellant that since exh P22 has been properly adduced and admitted as evidence pursuant to ss 91 and 92 of the Evidence Act 1950, it is not open to the respondents to challenge the validity of P22.

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[28] We found that the written agreement exh P22 was all along denied by the respondents. The document was placed in Part C of the Common Agreed Bundle of Documents, which means that its authenticity, existence and contents are disputed. During trial, the appellant produced in court what he G claimed to be the original copy of the said document. Learned counsel for the appellant sought to mark it as an exhibit which was objected to by learned counsel for the respondents. The ground of objection was that its existence was never known to and was never authorised by the respondents. The learned trial judge took the view that since the appellant had produced what he claimed to H be the original document, the document could be marked as an exhibit and the respondent's counsel could later cross-examine the appellant on the existence and validity of the document.

[29] Without reproducing the provision, it is trite that s 92 of the Evidence I Act 1950 only excludes oral evidence as to contradict the terms of the agreement. When there is a plea denying the agreement, oral evidence is admissible in support of that plea. Here, the respondents were not seeking to admit evidence to contradict the terms of the agreement but to show the court that there was never an agreement in the first place. That section is not attracted

when the existence and validity of the agreement is in question (see *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2001] 1 MLJ 324; [2001] 1 CLJ 779; and *Global Globe Property (Melawati) Sdn Bhd v Jangka Prestasi Sdn Bhd* [2020] 6 MLJ 333; [2020] 6 CLJ 1).

[30] Granted that the learned trial judge admitted the document and marked it as exh P22, Her Ladyship ultimately found that the document was an afterthought. On the totality of the evidence, it could not be said that her finding was wrong or against the weight of evidence. For completeness, we wish to state that quite apart from the issue of admissibility of exh P22, there was also the issue of probative value of the document. On our part, we found that exh P22 had no probative value.

[31] As for the issue of concealment raised by learned counsel for the appellant, with respect we found that the issue was not pleaded and no evidence was led to show that the second and the third respondents' companies which are owned by the first respondent were being set up solely as a façade to conceal or to deprive the appellant of his claim for the purported additional remuneration. *Prest v Prest* which was adverted to by the appellant in leave question 5 has no relevance to this appeal.

CONCLUSION

[32] We found that the decision of the trial judge in dismissing the appellant's claim, which was affirmed by the Court of Appeal was not plainly wrong. There was thus no reason for our appellate intervention. The appeal was accordingly dismissed with costs. And we did not consider it necessary to answer the leave questions.

Appeal dismissed.

Reported by Ashok Kumar